

Message Text

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PAGE 01 STATE 157983

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TREAS:DMACDONALD

ARA:JKUBISCH

ARA/BR:RBALLANTYNE

ARA/ECP:WKNEPPER(DRAFT)

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FM SECSTATE WASHDC

TO AMEMBASSY BRASILIA IMMEDIATE

C O N F I D E N T I A L STATE 157983

E.O. 11652: GDS

TAGS: ETRD, BR, US

SUBJ: COUNTERVAILING DUTIES

REF: BRASILIA 5058

1. DEPARTMENT APPRECIATES EMBASSY'S TIMELY REPORT OF EXPECTED GOB REACTION TO ISSUANCE OF COUNTERVAILING DUTY ORDER ON BRAZILIAN FOOTWEAR. WASHINGTON AGENCIES ARE, OF COURSE, WELL AWARE OF IMPLICATIONS OF SUCH ACTION FOR OUR BILATERAL RELATIONS AND THUS HAVE ATTEMPTED, INsofar AS LEGALLY POSSIBLE, TO TAKE THESE CONSIDERATIONS INTO ACCOUNT THROUGHOUT ALL STAGES OF PROCEEDINGS.

2. UNFORTUNATELY, PRESENT COUNTERVAILING DUTY STATUTE GIVES THE SECRETARY OF THE TREASURY NO DISCRETION IN ENFORCING THE LAW. THIS POINT HAS BEEN MADE REPEATEDLY TO
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PAGE 02 STATE 157983

GOB REPRESENTATIVES BOTH HERE AND IN BRAZIL; NONETHELESS,

AS SEEN FROM WASHINGTON (SUMMARY: REFTEL), BRAZILIANS ARE CONTINUING TO OPERATE AS IF USG HAS BROAD DISCRETIONARY AUTHORITY IN DECIDING WHETHER TO IMPOSE COUNTERVAILING DUTY AND THAT PROBLEM WOULD VANISH IF U.S. WOULD JUST EXERCISE ITS POLITICAL WILL. THIS IS SIMPLY NOT THE CASE. SECRETARY SIMON STRESSED THE POINT PUBLICLY THAT THE LAW IS MANDATORY, AND COMMITTED HIMSELF TO REASONABLE AND EXPEDITIOUS ADMINISTRATION OF THE LAW. THUS, CONTINUED APPEALS AT THE POLITICAL LEVEL ARE FRUITLESS.

3. REALISTICALLY, THE ONLY WAY GOB CAN AVOID THE IMPOSITION OF A COUNTERVAILING DUTY IN THIS CASE, ASSUMING A BOUNTY OR GRANT IS DETERMINED TO EXIST, WOULD BE TO MODIFY THE INCENTIVE REGIME TO ELIMINATE THE POTENTIAL BOUNTY OR GRANT. AN INFORMAL OFFER TO SUBMIT LEGISLATION CHANGING THE SYSTEM WOULD NOT BE SUFFICIENT. RAPID ENACTMENT OF SUCH LEGISLATION, IN CONTEXT OF GOB CONSTITUTIONAL PROCEDURES, OR USE OF OTHER LEGAL MEANS AT ITS DISPOSAL, E.G., ISSUANCE OF A PRESIDENTIAL DECREE TO ELIMINATE THE SUBSIDY, WOULD BE REQUIRED.

4. IF THE BRAZILIANS ARE PREPARED TO TAKE SUCH ACTION AND THE EMBASSY CAN OBTAIN A FIRM COMMITMENT FROM GOB AND IN EMBASSY'S JUDGMENT GOB CAN PRODUCE ON SUCH A COMMITMENT, TREASURY WOULD BE WILLING TO DELAY FOR A SHORT REPEAT SHORT PERIOD ISSUANCE OF COUNTERVAILING ORDER TO GIVE BRAZILIANS TIME TO WORK OUT DETAILS. WE ARE, HOWEVER, TALKING ABOUT A TOTAL PROCESS INVOLVING WEEKS, NOT MONTHS. IN DISCUSSING THIS APPROACH WITH BRAZILIAN OFFICIALS, AMBASSADOR MAY WISH TO POINT OUT, STRICTLY FOR BACKGROUND, THAT IN COUNTERVAILING DUTY CASE INVOLVING COLOMBIAN CUT FLOWERS, COLOMBIANS HAVE AGREED TO MODIFY IMMEDIATELY THEIR EXPORTS INCENTIVE SYSTEM TO AVOID IMPOSITION OF COUNTERVAILING DUTY. AS A RESULT OF THIS POSITIVE ACTION ON PART OF COLOMBIAN GOVERNMENT, TREASURY WILL IN ALL PROBABILITY NOT BE FORCED TO COUNTERVAIL.

5. IF, HOWEVER, GOB IS UNABLE OR UNWILLING TO ELIMINATE OR MODIFY SUBSIDIES WITHIN TIME FRAME DISCUSSED ABOVE, AND IF A BOUNTY OR GRANT IS FOUND ON SUBJECT SHOE EXPORTS, CONFIDENTIAL

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PAGE 03 STATE 157983

TREASURY WILL HAVE NO OPTION OTHER THAN TO COUNTERVAIL. WE WHOLEHEARTEDLY AGREE WITH EMBASSY THAT IN SUCH A CASE USG MUST MAKE EVERY EFFORT TO MITIGATE ADVERSE REACTION ON PART OF GOB. BELOW ARE OUR COMMENTS REGARDING THE SPECIFIC MEASURES OUTLINED IN PARAGRAPH 13 OF REFTEL.

(A) AMOUNT OF DUTY--TREASURY HAS NOT YET RECEIVED INFORMATION ON REPRESENTATIVE FIRMS SELECTED DURING VISIT

OF TREASURY TECHNICIANS TO BRAZIL AND THUS CANNOT DETERMINE EXACT LEVEL OF POTENTIAL DUTY WHICH COULD BE APPLIED TO BRAZILIAN SHOES. IN DETERMINING FINAL AMOUNT, TREASURY MUST BE GUIDED BY THE STATISTICAL INFORMATION AVAILABLE AND NOT THE POLITICAL PALATABILITY, EITHER IN THE U.S. OR IN FOREIGN COUNTRIES, OF A PARTICULAR LEVEL

OF DUTY.

(B) FUTURE COUNTERVAILING DUTY ACTIONS AGAINST BRAZIL--TREASURY HAS NO WAY OF ANTICIPATING WHETHER ADDITIONAL COMPLAINTS ALLEGING SUBSIDIZATION OF BRAZILIAN EXPORTS WILL FOLLOW AS A RESULT OF THESE PROCEEDINGS. OBVIOUSLY IF SUCH COMPLAINTS ARE RECEIVED THEY WILL BE PROCESSED AS THE LAW REQUIRES, INCLUDING EVENTUAL PUBLICATION OF PROCEEDING NOTICES AND ORDERS IF WARRANTED. THE ONLY WAY FOR THE GOB TO BE SURE THAT THERE ARE NO FURTHER CASES WOULD BE FOR THE GOB TO ELIMINATE THE PAYMENT OF BOUNTIES OR GRANTS ON EXPORTS TO THE U.S. AS EMBASSY AWARE, TREASURY INITIATES COUNTERVAILING DUTY INVESTIGATIONS ONLY ON THE BASIS OF A VALID COMPLAINT FROM A PRIVATE U.S. PARTY. AT PRESENT, THERE ARE NO OTHER COUNTERVAILING COMPLAINTS INVOLVING BRAZILIAN EXPORTS.

(C) SIMULTANEOUS ACTION AGAINST OTHER FOOTWEAR PRODUCERS--TREASURY ANNOUNCED, ON JULY 15, INITIATION OF COUNTERVAILING DUTY PROCEEDINGS AGAINST NON-RUBBER FOOTWEAR IMPORTED FROM SPAIN AND ARGENTINA.

(D) TONE OF ANNOUNCEMENT--ANY ANNOUNCEMENT WOULD ACCOMMODATE BRAZILIAN NEEDS TO THE EXTENT FEASIBLE, BY EMPHASIZING THE MANDATORY NATURE OF THE LAW, THE DIFFICULTIES OF THE DOMESTIC INDUSTRY AND THE NEED FOR A CONFIDENTIAL

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PAGE 04 STATE 157983

LONG-RUN SOLUTION TO THE PROBLEM OF EXPORT SUBSIDIES THROUGH INTERNATIONAL NEGOTIATIONS. INGERSOLL

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